

### **REMARKS/ARGUMENTS**

In the Office Action mailed February 11, 2004, claims 12-27 are withdrawn, claims 1, 2, 5, 8-10 are rejected and claims 3, 4, 6, 7, 9, and 11 are objected to. Applicants have thoroughly reviewed the outstanding Office Action including the Examiner's remarks and the references cited therein. Applicants have amended claim 3 and claim 9 for grammatical reasons. The respective scope of claim 3 and of claim 9 have not been changed in any way and therefore claims 3 and 9 are entitled to full scope both literally and under the doctrine of equivalents. The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references.

### **CLAIM OBJECTIONS**

Examiner objected to claim 9 was objected to due to various informalities. Applicants have amended the claims to conform to the Examiner's requests. As mentioned above, the scope of claim 9 has not been changed in any way and therefore claim 9 is entitled to full scope both literally and under the doctrine of equivalents. In light of these amendments, Applicant respectfully requests that the objection to this claim be removed.

### **CLAIM REJECTIONS – 35 U.S.C. § 102(b)**

Claims 1, 2, 5, 9, and 10 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. 5,311,628 by Springer et al. Applicant respectfully traverses these rejections. In light of the following remarks, Applicants respectfully submit that these claims are allowable.

Anticipation under § 102 requires that the asserted reference contain each and every element of a claim. MPEP § 706.02. Claim 1 recites a “biasing member coupled to the guard, wherein the biasing member biases the guard toward the raised position when the guard is in the raised position, and wherein the biasing member biases the guard toward the lowered position when the guard is in the lowered position.” Springer et al. does not disclose such an element. The Examiner points to the hydraulic cylinder 27 in the specification of Springer as the “biasing member” of claim 1. Applicants respectfully point out that the cylinder in Springer is used as an actuating member, and not a biasing member, as is evident from Col. 4, lines 64-68, which states that “the barrier member may be *actuated* by means other than a piston and hydraulic cylinder. . . .” This statement shows that the cylinder of Springer is used for actuating, and not biasing. The Springer reference does not refer to the cylinder 27 as a “biasing member,” and it is consistently used, along with a piston, as an actuating member.

Because the Examiner has not shown that Springer et al. contains each and every element of of Claim 1, applicants respectfully request withdrawal of the rejection under § 102.

In light of the foregoing arguments, withdrawal of the rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Springer is respectfully requested. Additionally, because claims 2, 5, 9, and 10 depend from claim 1, claims 2, 5, 9 and 10 are patentable at least by reason of their dependency from claim 1. Applicant respectfully requests withdrawal of the rejection of claims 2, 5, 9 and 10 under 35 U.S.C. § 102(b).

### **CLAIM REJECTIONS – 35 U.S.C. § 103(a)**

The Examiner rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Springer et al. and U.S. Patent No. 6,163,913 to DiSieno et al. Applicants respectfully traverse this rejection.

As stated above, claim 1 has been shown to be patentable. Because claim 8 is dependent upon claim 1, claim 8 is patentable at least by reason of its dependency. Applicant respectfully requests the removal of the rejection for claim 8.

### **ALLOWABLE SUBJECT MATTER**

Applicants thank the Examiner for her statement that claims 3, 4, 6, 7, and 11 contain allowable subject matter. However, as indicated above, applicant believes claim 1, from which claims 3, 4, 6, 7, and 11 depend, also contains allowable subject matter, and applicants have therefore chosen not to substantively amend these dependent claims. Because claim 1 contains allowable subject matter, applicants respectfully request that the Examiner's objection to claims 3, 4, 6, 7, and 11 be withdrawn, and that claims 1-11 be allowed.

### **CONCLUSION**

In view of the foregoing remarks, Applicant respectfully requests that all objections and rejections be withdrawn, and that claims 1-11 be allowed. If, for any reason, the Examiner disagrees, please call the undersigned attorney at 202-861-1554 in an effort to resolve any matter still outstanding before issuing another action. The undersigned attorney is confident that any issue which might remain can readily be worked out by telephone.

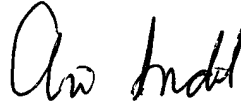
Docket No. 87269.3581  
Serial No. 10/071,595  
Customer No. 30734

Patent

In the event this paper is not timely filed, Applicant petitions for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036.

Respectfully submitted,

BAKER & HOSTETLER LLP



Ari S. Indik  
Reg. No. 55,293

Date: May 11, 2004  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5304  
Telephone: 202-861-1500  
Facsimile: 202-861-1783